

IN THE
Supreme Court of the United States
OF THE

OCTOBER TERM, 1944

No. 439

SALT RIVER VALLEY WATER USERS' ASSOCIATION,
a corporation,

Petitioner,

vs.

CHARLES F. REYNOLDS, et al,

Respondents.

RESPONDENT'S REPLY BRIEF
TO
PETITION FOR WRIT OF CERTIORARI.

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Santa Cruz Packing Co. vs. Nat'l Labor Board

303 U. S. 453, 58 Sp. Ct. Rep. 656.

RESPONDENT'S BRIEF

STATEMENT OF ISSUE

Petitioner, as reasons relied on for allowance of the writ of certiorari, complains the Circuit Court of Appeals relied upon the authority of *Kirschbaum vs. Walling*, 316 U. S. 517, 62 Sp. Ct. Rep. 1116, and submits for the consideration of this Court the rule announced in *McLeod vs. Threlkeld* (319 U. S. 491, 63 Sp. Ct. Rep. 1248) as relied upon by the Trial Court, should govern the disposition of this case.

The issue, thus raised, involves a study of the facts adduced and established at the trial.

These facts, as summarized by the Circuit Court of Appeals (R. 334-339), and which are not in dispute, are as follows:

"Appellee operates a water and electric system for the supply of irrigation and power in central Arizona, which consists of five large storage dams, two diversion dams, eight hydro-electric plants, one steam plant, one Diesel plant, 1400 miles of canals and laterals, hundreds of miles of power lines, two hundred deep well pumps, and other plant and equipment necessary for the operation of a water and electric utility. These works extend over a great area, the lands served by appellee's water themselves comprise approximately 250,000 acres. Appellee's investment in power plants approximates \$23,000,000. During the twelve months' period in-

volved in this case appellee generated at its power plants 408,779,430 kilowatt-hours of electricity. The power is supplied to copper mining companies for use in their mines.

Appellee obtains the bulk of its water both for irrigation and for the generation of power from the Salt and Verde Rivers. Its shareholders are farmers in the Salt River Valley. They or their predecessors in interest appropriated and so, become entitled to the use of the water in the Salt and Verde Rivers for the irrigation of their lands which would otherwise be arid and unproductive. Prior to the organization of appellee, this water was distributed to the farmers by a number of canal companies.

Appellee was organized for the purpose of unifying these projects and thus conserving all possible water and distributing it to the farmers more effectively than before. One share of appellee's stock was issued for each acre of land in the project. The stock is appurtenant to the land and passes therewith.

With federal assistance and in furtherance of its purposes appellee has augmented its work and, to harness the water power, has constructed hydroelectric plants for the generation of electricity. The right to the use of the water, however, remains in appellee's shareholders—the farmers in the Salt River Valley who require and are by law entitled to it for the irrigation of their lands—and appellee is charged with the obligation to hold this water for,

and deliver it to them in proportion to their interests subject only to their paying assessments in advance of delivery in order to defray appellee's costs and expenses.

The water, therefore, is allowed to flow only in accordance with the demands of the shareholders, and appellee makes no independent disposition of it. As the water is called for by the shareholders, appellee guides its flow from the rivers and reservoirs through its hydro-electric plants (thereby generating electricity) and on down through the network of canals, laterals and ditches to the shareholders. Thus the demand for, and distribution of, water also determines the production of electricity; in other words, the electricity is generated at the hydro-electric plants only as appellee delivers water to its shareholders. Appellee's water and electric system constitutes a single coordinated enterprise based primarily upon the use of the water of the Salt and Verde Rivers.

To augment this supply, however, appellee pumps underground water into its canals and laterals, and distributes it to the shareholders for irrigation. Appellee's pumps are operated by electricity, a portion of which it receives from out of the state, and the remainder of which it generates.

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Appellee with its 1400 miles of canals and laterals, 5 storage dams, 2 diversion dams, 8 hydro-electric

plants, steam plant, Diesel plant, hundreds of miles of power lines, 200 deep well pumps, and other plants and equipment is not a "service establishment".

Appellee's employees engaged in pumping and directing the flow of water for the irrigation of its shareholders' lands are "engaged in the production of goods" for interstate commerce, since such supplying of water is a 'process' and an "occupation necessary to the production" of such goods as defined in section 3 (j) of the Act. More particularly, appellee's maintenance employees are engaged in maintaining, cleaning, and repairing the canals, laterals, and ditches through which the water flows to irrigate the farms. These employees mow and burn noxious grasses and weeds which, if permitted to grow without restraint, would clog the canals, laterals and ditches and stop the vital flow of water. In their work they operate draglines, bull dozers, dredges, shovels, mowers, burners and other necessary machines. They also perform repair work upon head gates, weirs, and other physical equipment which controls the flow of the water through appellee's works.

The pump men operate and service the electric pumps which draw from underground the water to be delivered to appellee's shareholders in addition to the water obtained from the Salt and Verde Rivers. Whenever these employees switch on the pumps they cause electricity, including electricity origin-

ating outside the State of Arizona, to flow through appellee's lines. Thus these employees, in addition to supplying water to appellee's shareholders, are engaged in bringing electricity into the state".

The Trial Court, in making its "Findings of Fact" found (R. 320):

"5. That during the period referred to in said complaint, plaintiffs, in this action were employees of defendant association and engaged in work **necessary for the operation and maintenance of the irrigation works of said project operated by the defendant and in the delivery of irrigation water** to the shareholders of defendant association."

The issue, therefore, that Petitioner submits for determination of this Court, is whether all Respondents are engaged in a process or occupation necessary and essential to the production of goods for commerce, and whether the Respondent, Pump Operators, in addition, are "engaged in commerce".

ARGUMENT

PRODUCTION OF GOODS FOR COMMERCE

No cotton, fruit or vegetables, shown to have been moved in interstate commerce from the 250,000 acres, comprising the Salt River Project, would have been produced without irrigation from water produced, impounded, and delivered by the labor of the employees of the

Petitioner Association. The Association, Petitioner herein, was incorporated, organized and is operated as a private corporation. The stockholders are limited to land-owners producing cotton, fruit and vegetables, and other crops grown for interstate shipment.

Petitioner's Brief (p 25) states:

"THE GREAT MAJORITY OF ALL CROPS AND OTHER PRODUCTS RAISED AND GROWN ON THE FARMS IN THE SALT RIVER VALLEY ARE SHIPPED BY RAIL."

All classes of respondents, Maintenance men, Pump operators, and Zanjeros, are employed, engaged and devote their time and labor to the delivery of this water to produce the crops.

Our reply to Petitioner's argument that such employees are not essential and necessary in any process or occupation to the production thereof, is simply that no cotton, fruit or vegetables would be produced and shipped from this project without their labor.

Farm Products were not exempted by the Fair Labor Standards Act.

"With respect to the power of Congress to protect interstate commerce in the commodities produced there is obviously no difference between coal mined, or stone quarried and fruit and vegetables grown" (Santa Cruz Packing Company vs. Nat'l Labor Board, 303 U. S. 453, 58 Sp. Ct. Rep. 656).

It is noteworthy that limited exemptions to labor in

connection with farm products were granted. Labor **performed by a farmer on a farm**, and labor used in first processing of definite and specific crops, were exempted from the operation of the Act. No such claim, however, is made by the Association that it performs labor on a farm, by a farmer, or are the employees herein engaged in the first processing after their production of any of the defined crops. No exemptions were granted farm co-operatives, or companies organized by farmers for their mutual benefit.¹

Section 3 (i) defines "goods" to include "articles or subjects of commerce of any character."

C O P P E R

Four large mining Companies, utilizing the power generated in Petitioner's Hydro-electric system, export from Arizona their entire output of copper. (R 92-94). The power generated by the labor of the employees, respondents herein, produces the copper shipped. The fact the employer is a separate company that generates and sells the power to the mining Company that produces the goods does not exempt the labor. (*Kirschbaum vs. Walling*, *supra*). The owners of the loft building, employers of the labor in the *Kirschbaum* case, were not engaged in the production of the goods that were shipped into interstate commerce.

The Zanjeros and Maintenance men conduct the water

¹. See Interpretative Bulletin of Administrator Wage and Hour Division. p 1 Appendix.

through the canals, that perform the multiple service of generating the power at the same time the water is delivered to the farmer.

This water must be controlled by labor in order to utilize it for the double purpose of serving the land and developing power. The Zanjeros control this water through the canals, while the maintenance men keep the canals and ditches in repair and clean in order that the water may flow through the generators, and on to the farmer.

"ENGAGED IN COMMERCE"

Of the 105 Respondents herein, the 8 employees engaged as Pump Operators are in a class by themselves. The Pump Operators are the only class of employees alleged to be "engaged in commerce" as distinguished from employees employed in a process or occupation necessary and essential to the production of goods for commerce.

The 8 Pump Operators utilize and divert the power coming in over the high power transmission lines from Boulder Dam, on the Nevada side of the Colorado River, through California, into Arizona. This is done when they throw the switches from the power line into the motors operating the electrical driven pumps operated by the Petitioner. (P. 151 R.)

A locomotive engineer that pulls the throttle, releasing the power that drives the train over the rails in interstate traffic is engaged in commerce, and whether the com-

modity comes by rail, or the power that is transmitted by wire, the operator that switches and controls the interstate traffic is "engaged in commerce."

Petitioner complains that if the Pump operators are covered by the Act, then every man, woman and child living in the valley are likewise. The Fair Labor Standards Act covers only employees of the Company "engaged in Commerce", and the Petitioner (R. 63), itself is engaged in commerce in importing the power from Boulder, and utilizing it, through these respondents, in its operations. Every man woman and child are not employees of a Company employing labor under the Fair Labor Standards Act.

The Petitioner is engaged in commerce in purchasing, transmitting by wire and utilizing the electrical power generated outside of Arizona. The employees of the Petitioner actually directing, controlling, and diverting that power so transported over the High Power transmission lines into the motors for which the power is purchased and transmitted are "engaged in commerce" as employees covered by the Fair Labor Standards Act.

Pump Operators Also Produce

These same 8 pump operators, respondents herein, are engaged in a process and occupation essential to the production of crops shipped, in their capacity of lifting the water produced by their operation of the electrically driven pumps. The water thus produced is turned into the canal system for the irrigation of the land. The stored water impounded from rainfall in the dams and the pump water reclaimed from underground is comingled and used in the production of the crops shipped.

McLeod vs. Threlkeld

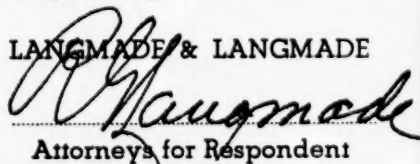
(319 U. S. 491)

McLeod, a cook, was engaged in supplying meals to persons "engaged in commerce". No claim was advanced that McLeod was engaged in a process necessary to the "production of goods for commerce". Respondents herein, and all of them are claiming coverage because of their activities in a process essential to the production of goods. This distinction is clearly established by the record in the instant case. The Circuit Court of Appeals rejected the Petitioner's contention that the rule established in the *McLeod vs. Threlkeld* applied to the facts in this case, and we submit there is no error justifying the issuance of a Writ of Certiorari.

In view of the supporting authorities cited by the Circuit Court of Appeals in the opinion rendered, we have not encumbered this argument with a repetition thereof.

Respectfully submitted

LANGMADE & LANGMADE

A handwritten signature in dark ink, appearing to read "R. Langmade", is written over the printed name "LANGMADE & LANGMADE". The signature is fluid and cursive.

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